1924
*June 6.
*June 18.

VERSAILLES SWEETS, LIMITED (DEFENDANTS) ..... APPELLANT;

AND

THE ATTORNEY GENERAL OF CANADA (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

Assessment and taxes—Excise tax—Dominion Sales Act. 5 Geo. V, c. 8, s. 19 amended by 11-12 Geo. V, c. 5, s. 19BBB and 12-13 Geo. V, c. 47 s. 13—Tax on manufacturers—Sale direct to consumers.

By the Special War Revenue Act of 1915 as amended in 1921 and 1922, a tax is imposed on sales by manufacturers to consumers, the purchaser in each case to be given an invoice.

Held, that notwithstanding the difficulty of furnishing invoices of sales for very small amounts, and that in such cases the exact amount of the tax cannot be collected from the purchaser, the manufacturer of candy for sale over the counter at 30 cents and 40 cents per pound is liable for the amount of the prescribed tax on each such sale.

1924

VERSAILLES SWEETS, LIMITED v. THE ATTORNEY GENERAL OF CANADA.

Idington J.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario affirming the judgment at the trial in favour of the respondent.

The question for decision on this appeal is stated in the above head-note and the material statutory provisions are cited in the judges' opinions published herewith.

Beament K.C. for the appellant.

Charles W. Kerr for the respondent.

IDINGTON J.—I can find no good reason for interfering with the judgment appealed from herein and am therefore of the opinion that this appeal should be dismissed with costs.

DUFF J.—The appellant company carries on a business in Toronto, which includes a restaurant and what is called "an ice cream parlour and candy shop"; and in its shop are sold, at retail only, sweets purchased in the ordinary course of business from manufacturers, and others made in the appellant company's own kitchen, which is the restaurant kitchen, the annual returns from the sale of sweets so made being above five per cent of the total receipts of the business. The question is whether the appellant company is subject to taxation by way of sales tax under section 19BBB of the Special War Revenue Act of 1915. In so far as relevant, the section is as follows:—

19BBB. (1) In addition to the present duties of customs and excise there shall be imposed, levied and collected an excise tax of one and one-half per cent on sales and deliveries by Canadian manufacturers or producers, and wholesalers or jobbers, and a tax of two and one-half per cent on the duty paid value of goods imported, but in respect of sales by manufacturers to retailers or consumers. * * *

It is argued that "manufacturers" in this context does not include manufacturers who sell exclusively to consumers, within which description the appellant company admittedly would be included. It is pointed out that retailers—persons who sell by retail to consumers, who are neither wholesalers (that is to say, who do not sell to retailers) nor manufacturers—do not fall within the incidence of the section. Sales by them are not within the scheme of taxation established. It is argued that such a scheme naturally excludes all sales by persons, whether manufacturers or not, who sell exclusively to consumers; and in support of the contention that the scheme of the Act excludes them, the

1924
VERSAILLES SWEETS, LIMITED v. THE ATTORNEY GENERAL OF CANADA.
Duff J.

appellant calls attention to the circumstance that, in case of sales coming within the ambit of the section, the seller is obliged to furnish the purchaser with what is called an "invoice"; and moreover, that, having regard to the scale of the tax, it would be impossible, in the case of sales of sweets in small quantities to consumers, to collect the exact amount payable; and consequently that, in order to carry out the provisions of the Act, the seller in each case, if the Act applied to such sales, would be obliged to collect a sum greater than the tax.

Without denying the force of much of this argument, it does not, in my judgment, carry one to the point at which one is entitled to ascribe to the word "manufacturer" a less limited meaning than that which it naturally and ordinarily bears. The rule for the construction of a taxing statute is most satisfactorily stated, I think, by Lord Cairns in *Partington* v. *Attorney General* (1):

> I am not at all sure that, in a case of this kind—a fiscal case—form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

Lord Cairns, of course, does not mean to say that in ascertaining "the letter of the law," you can ignore the context in which the words to be construed stand. What is meant is, that you are to give effect to the meaning of the language; you are not to assume:

> any governing purpose in the Act except to take such tax as the statute imposes

as Lord Halsbury said in *Tennant* v. *Smith* (2). Construed according to this rule the statute, I think, does not admit of the construction proposed by the appellant. In this view it is unnecessary to construe the provisions of the statute of 1922.

The appeal should be dismissed with costs.

(1) L.R. 4 H.L. 100, at page 122. (2) [1892] A.C. 154.

1924

VERSAILLES SWEETS, LIMITED v. THE ATTORNEY GENERAL OF CANADA.

Anglin J.

ANGLIN J.—The appellant seeks to be declared not liable for sales tax under the Special War Revenue Act, 1915, for the years 1921 and 1922 and to be relieved of penalties imposed upon it for non-compliance with that statute during those two years—as to the earlier year on the ground that it was not a " manufacturer or producer " within the meaning of section 19BBB (1) of the Special War Revenue Act, 1919, as re-enacted by section 1 of chapter 50 of The Dominion Statutes, 1921, and as to the later year on the ground that no tax is specified in section 19BBB (1) as again re-enacted in 1922 by section 13 of chapter 47 of the statute of that year, as payable on

sales of goods manufactured for stock for merchants who sell exclusively by retail,

the classification within which it claims to fall.

Prima facie the appellant is " a Canadian manufacturer or producer " of candies who sells them directly to consumers and is therefore liable under section 19BBB (1), as re-enacted in 1921, for an excise tax at the rate of three per cent on such sales. I cannot accede to Mr. Beament's ingenious argument that the natural meaning of the terms " manufacturers and producers " is by the context restricted to persons who manufacture or produce for sale to persons who ordinarily purchase for re-sale, such as wholesalers, jobbers or retailers. The Act explicitly covers the case of the manufacturer or producer whose business in whole or in part is to sell directly to consumers, and I find nothing to justify excluding from its application a case so specifically dealt with.

The fact that the concluding clause of the proviso to the section, as re-enacted in 1922, appears to have been designed to fit precisely such a case as that of the appellant does not warrant taking out of the operation of section 19BBB (1), as re-enacted in 1921, a case which it appears plainly to include.

I am also unable to assent to the contention that no tax is specified in section 19BBB (1), as re-enacted in 1922, as applicable to the merchant who sells exclusively to consumers but manufactures goods for stock which he thus disposes of. His sales are in the language of that section " sales by a manufacturer or producer to consumers " and

1924

VERSAILLES SWEETS, LIMITED v. THE ATTORNEY GENERAL OF CANADA.

Anglin J.

the section specifies for such sales an excise tax of four and one half per cent.

No other ground of appeal was urged. As both grounds taken fail, the appeal must be dismissed with costs.

MIGNAULT J.—I would dismiss the appeal with costs for the reasons stated by my brother Anglin.

MALOUIN J.—I would dismiss this appeal with costs for the reasons assigned by the trial judge.

Appeal dismissed with costs.

Solicitors for the appellant: *Beament & Beament.*
Solicitor for the respondent: *Charles W. Kerr.*

*PRESENT:—Idington, Duff, Anglin, Mignault and Malouin JJ.